

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In The Matter Of:)	
)	
Beverly Joyce Reed-Smith	)	Case Number: 18-45804-659
AKA Beverly J. Reed-Smith)	
)	
Debtor	)	Chapter 13
)	
Bayview Loan Servicing, LLC, a	)	Motion to Lift Stay filed by
Delaware Limited Liability Company	)	Bayview Loan Servicing, LLC, a Delaware
	)	Limited Liability Company
Movant,)	
)	
vs.	)	Millsap & Singer, LLC
	)	612 Spirit Drive
Beverly Joyce Reed-Smith	)	St. Louis, MO 63005
AKA Beverly J. Reed-Smith	)	(636) 537-0110
)	
and	)	Hearing Date: December 17, 2018
	)	Hearing Time: 10:00 AM
Diana S. Daugherty	)	Objection Deadline: December 10, 2018
)	
Trustee)	
)	
Respondents)	
)	

**MOTION TO DISMISS, OR IN THE ALTERNATIVE
FOR RELIEF FROM THE AUTOMATIC STAY**

WARNING: THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE BY DECEMBER 10, 2018 . YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY



RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU.

IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. THE DATE IS SET OUT ABOVE. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS. THE HEARING TO BE HELD ON THE DATE AND TIME ABOVE BEFORE THE HONORABLE KATHY A. SURRETT-STATES, IN THE UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF MISSOURI, THOMAS F. EAGLETON U.S. COURTHOUSE, 111 SOUTH TENTH STREET, FLOOR 7, NORTH COURTROOM, ST. LOUIS, MO 63102.

COMES NOW, Bayview Loan Servicing, LLC, a Delaware Limited Liability Company and for its Motion to Dismiss, or in the Alternative, for Relief from Automatic Stay, states as follows:

1. On September 11, 2018, Debtor filed a Petition under Chapter 13 of the Bankruptcy Code. Diana S. Daugherty is the duly appointed and qualified Trustee in this case.

2. Bayview Loan Servicing, LLC, a Delaware Limited Liability Company is the holder of a secured claim in this proceeding by virtue of one Promissory Note dated November 26, 2002 in the original principal amount of \$72,000.00. A copy of said Note has been electronically attached to this document as Exhibit A and is made a part hereof by this reference.

3. Said Note is secured by a Deed of Trust dated November 26, 2002 and recorded as Book 14405, Page 2759 and Modified by Scrivener's Error Affidavit Recorded on July 28, 2003 as Book 15120, Page 2453 constituting a first lien on real



estate owned by the Debtor. Said property being commonly known as 6323 Audrey Ave, Saint Louis, MO 63133; more particularly described as follows:

LOT 4 OF AUDREY ESTATES, A SUBDIVISION IN ST. LOUIS COUNTY, MISSOURI, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 349 PAGE 422 OF THE ST. LOUIS COUNTY RECORDS.

A copy of said Deed of Trust, which is recorded in the St. Louis County Recorder of Deeds Office, has been electronically attached to this document as Exhibit B and is made a part hereof by this reference.

4. Movant seeks to enforce said Note and Deed of Trust as by law allowed. No creditor or Trustee of the estate has any interest in said realty superior to the rights of Movant.

5. This Court previously entered its Order pursuant to 11 U.S.C. Section 362(a) prohibiting, among other things, any act to enforce any lien against the property of the estate and any act to obtain possession of property of the estate.

6. As of October 31, 2018, the current pay off on said note is as follows:

Principal	\$65,000.00
Interest	\$7,128.63
Late Charges	\$92.50
Escrow	\$2,633.68
NSF Charges	\$50.00
Recoverable Balance	\$3,084.37
 Total Pay Off	 \$77,989.18

7. Monthly payments are owing and delinquent from March 1, 2017. The following are the payments that are delinquent as of October 31, 2018:

19 payments @ \$369.99	\$7,029.81
1 payment @ \$554.30	\$554.30
 Total Arrearages	 \$7,584.11

A payment history has been electronically attached to this document as Exhibit C and is made a part hereof by this reference.



8. In addition to the other amounts due to Movant reflected in this Motion, as of the date hereof, in connection with seeking the relief requested in this Motion, Movant has also incurred attorney fees in the amount of \$600.00 and costs in the amount of \$181.00. Movant reserves all rights to seek an award or allowance of such fees and expenses in accordance with applicable loan documents and related agreements, the Bankruptcy Code and otherwise applicable law.

9. The heirs of Barbara Walton have had a combined eight bankruptcy filings. Heir, Mary E. Thomas filed her first Chapter 13 bankruptcy case on October 4, 2004 as case 04-52686. Movant filed a Motion for Relief from Stay on November 8, 2004, which was denied on December 17, 2004. Movant filed a second Motion for Relief from Stay on March 22, 2005 which was settled with a stipulation agreement entered on April 19, 2005. Movant filed a Notice of Default was filed on May 4, 2005 and withdrawn on May 9, 2005. The case dismissed on August 18, 2005 due to failure to make plan payments and closed on September 29, 2005. Heir, Beverly Reed-Smith filed her first Chapter 13 bankruptcy case on August 25, 2005 as case 05-51977. The case was discharged on May 25, 2010 and closed on October 15, 2010. Heir, Wilson B. Thomas, Jr. filed his first Chapter 13 bankruptcy case on October 14, 2005 as case 05-59057. The case dismissed on January 17, 2006 for failure to make plan payments and closed on February 14, 2006. Heir, Wilson B. Thomas, Jr. filed his second Chapter 13 bankruptcy on March 28, 2006 as case 06-41170 with Teresa H. Thomas. On April 20, 2006, debtor Teresa H. Thomas filed a motion to dismiss party which was granted on May 11, 2006. On June 19, 2006, debtor Wilson B. Thomas filed a Motion to Dismiss Case Voluntarily which was granted on June 20, 2006. Heir, Beverly Reed-Smith filed her second Chapter 13 bankruptcy on November 16, 2010 as case 10-53123. The case discharged on July 22, 2014 and closed on September 8, 2014. Heir, Beverly Reed-Smith filed her third Chapter 13 bankruptcy as 15-43728. The case dismissed on January 23, 2017 for failure to make plan payments and closed on March



8, 2017. Heir, Beverly Reed-Smith filed her fourth Chapter 13 bankruptcy on July 3, 2018 as 18-44270. The case dismissed on August 23, 2018 for failure to make plan payments and closed on October 19, 2018. Heir, Beverly Reed-Smith filed her fifth, and current Chapter 13 bankruptcy, the eighth against the property, on September 11, 2018 as 18-45804.

10. Movant has had seven attempts at foreclosure. Movant had a foreclosure sale on October 14, 2004 which was later voided due to Heir, Mary Thomas being in active bankruptcy at the time of the sale. Movant had a foreclosure sale scheduled for October 13, 2005, which was cancelled on October 6, 2005 due to heir, Beverly Reed-Smith's bankruptcy case being filed. Movant had a foreclosure sale scheduled for December 8, 2005, which was cancelled on November 29, 2005 when heir, Beverly Reed-Smith's bankruptcy case was reinstated. Movant initiated foreclosure on July 1, 2015, which was cancelled due to heir, Beverly Reed-Smith filing her third Chapter 13 bankruptcy case. Movant had a foreclosure sale scheduled for July 6, 2018 which was cancelled on the sale date due to heir, Beverly Reed-Smith filing her fourth Chapter 13 bankruptcy case. Movant initiated foreclosure on September 14, 2018 which was cancelled due to heir, Beverly Smith-Reed's current Chapter 13 bankruptcy case being filed.

11. The aforesaid realty has depreciated in value while in possession of the Debtor. There is no equity in said property for the benefit of the Debtor.

12. The present case is not filed in good faith as required by 11 U.S.C. Section 1325 (a)(3). The latest Chapter 13 by the Debtor was filed solely to hinder, delay and frustrate creditors of the Debtor in bad faith.

13. Movant seeks an Order prohibiting the filing by the Debtor of a new petition under the Bankruptcy Code for a period of 180 days.



14. Movant is not provided adequate protection of its interest in said property pursuant to 11 U.S.C. § 362 (d). Said property has no equity for the benefit of the Debtor and is not necessary for an effective reorganization.

15. Movant seeks an Order Ratifying procedural steps taken in furtherance of the scheduled foreclosure sale while the case of the Debtor has been pending.

WHEREFORE, Movant prays that this Court dismiss this case or, in the alternative to terminate the automatic stay in regard to the realty in order to permit Movant, or its successors and assigns to proceed with foreclosure on the aforesaid property, to pursue its remedies under state law in connection with the aforesaid Deed of Trust and Note; to pursue its remedies under state law for possession of said property after foreclosure, to proceed with any foreclosure alternatives; for ratification of procedural steps taken in furtherance of the scheduled foreclosure sale while the case of the Debtor has been pending; for an order that the relief from the automatic stay is not stayed pursuant to Rule 4001 for fourteen (14) days; for an Order prohibiting the Debtor from filing a new petition in bankruptcy for a period of 180 days from the dismissal of this case, and for such further orders as the Court deems just and proper.

Dated November 21, 2018

Respectfully Submitted,
Millsap & Singer, LLC

/s/ William T. Holmes, II

Cynthia M. Kern Woolverton, #47698, #47698MO

William T. Holmes, II, #59759, #59759MO

Stewart C. Bogart, #67956, #67956MO

612 Spirit Drive

St. Louis, MO 63005

Telephone: (636) 537-0110

Facsimile: (636) 537-0067

bkty@msfirm.com



CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was filed electronically on November 21, 2018, with the United States Bankruptcy Court, and has been served on the parties in interest via e-mail by the Court pursuant to CM/ECF as set out on the Notice of Electronic filing as issued by the Court or in the alternative has been served by depositing a true and correct copy of same enclosed in a postage prepaid, properly addressed envelope, in a post office official depository under the exclusive care and custody of the United States Postal Service within the state of Missouri on those parties directed by the Court on the Notice of Electronic Filing issued by the Court as required by the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court.

/s/ William T. Holmes, II

Electronic Mail Notice List

The following is the list of attorneys who are currently on the list to receive e-mail notices for this case.

Suzanne Rechten Reinhold

Diana S. Daugherty

Office of the United States Trustee

Manual Notice List

The following is a list of parties who are not on the list to receive e-mail notices for this case (who therefore require manual noticing).

Beverly Joyce Reed-Smith
AKA Beverly J. Reed-Smith
6323 Audrey Ave.
Wellston, MO 63133



**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
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Diana S. Daugherty)	
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Trustee)	
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Respondents)	
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SUMMARY OF EXHIBITS AND CERTIFICATE OF SERVICE

The following exhibits in reference to the Motion for Relief have been electronically attached as Exhibits and are available upon request in their entirety.

- A. Note
- B. Deed of Trust
- C. Payment History

Respectfully Submitted,
Millsap & Singer, LLC

/s/ William T. Holmes, II

Cynthia M. Kern Woolverton, #47698, #47698MO
William T. Holmes, II, #59759, #59759MO



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Facsimile: (636) 537-0067
bkty@msfirm.com
Attorneys for Bayview Loan Servicing, LLC, a
Delaware Limited Liability Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of all documents supporting my Motion for Relief referenced above, including legible copies of all documents evidencing perfection of security interests have been served on the Trustee and Counsel for the Debtor on November 21, 2018. Copies of the above documents are available to other parties in interest upon request.

/s/ William T. Holmes, II

